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WISCONSIN EMPLOYMENT RELATIONS COMMISSION  
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BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of the Mediation/ Arbitration between :  
SCHOOL DISTRICT OF SOUTH MILWAUKEE :  
and : AWARD AND OPINION  
SOUTH MILWAUKEE EDUCATION ASSOCIATION : Decision No. 19668-A

Case No. XV - No. 29490  
Med/Arb 1601  
Hearing Date August 23, 1982  
Appearances:  
For the Employer Mulcahy & Wherry, S.C.,  
Attorneys at Law, by  
MR. MICHAEL L. ROSHAR  
For the Union MR. JAMES GIBSON,  
Executive Director  
Mediator/Arbitrator MR. ROBERT J. MUELLER  
Date of Award December 6, 1982

BACKGROUND

The School District of South Milwaukee, hereinafter referred to as the "District"; and the South Milwaukee Education Association, hereinafter referred to as the "Association", reached an impasse in bargaining for a successor Collective Bargaining Agreement to succeed their agreement which expired on June 30, 1982. A Petition was filed with the Wisconsin Employment Relations Commission requesting initiation of mediation/arbitration pursuant to the Municipal Employment Relations Act. Subsequent thereto, a member of the Commission staff conducted an investigation and determined that a deadlock existed. The undersigned was thereafter selected to serve as the mediator/arbitrator to resolve the dispute. The initial mediation/arbitration meeting was scheduled for August 23, 1982. At such time and meeting, the District and Association advised the undersigned that last minute efforts had been made to resolve and settle the issue remaining. They further advised the undersigned that in their judgment mediation efforts would be futile as each side was firmly committed to their respective final offer positions and therefore saw no possible prospect for modification or movement therefrom and that therefore mediation efforts would be futile. The parties were then afforded opportunity to modify or withdraw their respective final offers. Each party declined to either modify or withdraw their respective offers and both indicated that they were then and there fully prepared to proceed to arbitration and to present their respective cases. The matter then was heard in arbitration and both parties were afforded full opportunity to present such exhibits, testimony, and arguments as they deemed relevant. Both parties filed post-hearing briefs and reply briefs.

FINAL OFFERS OF THE PARTIES

Before setting forth the final offers of the parties, it is desirable to focus attention on those aspects of the salary schedule upon which the parties negotiate changes and which items are reflected in their respective final offers. With a detailed salary schedule in place, the parties address and negotiate changes in the base salary of the BA and MA lanes, negotiate an across-the-board percentage increase, increases in increments, and a percentage increase for teachers who are at the maximum of the salary schedule. The salary schedule that is in place also provides that teachers shall be paid \$30.00 for every credit they earn beyond a BA or MA degree to a maximum of \$1,080.00, and such increase in pay is implemented immediately as credits are earned. In this case, the parties submitted final offers that addressed such areas involving the salary schedule for a two-year contract covering the 1982-83 school term and the 1983-84 school term. The final offers of each are as follows:

DISTRICT'S FINAL OFFER

"1982-1983 SALARY SCHEDULE

	BA	MA
Minimum	\$13,420	\$14,986
Maximum	24,676	28,423
Increment	715	803

An amount will be granted by recommendation of the Administration of a total of 5.5% of the individual's base salary (not including the increment) not to exceed the maximum of schedule. This provision shall not apply to teachers who were at or above the maximum salaries in 1981-1982.

Each teacher at the maximum of either the Bachelor's or Master's Degree level in 1981-1982 shall receive an increase of 8.3% over their 1981-1982 base salary.

"1983-1984 SALARY SCHEDULE

	BA	MA
Minimum	\$14,118	\$15,765
Maximum	26,527	30,555
Increment	725	815

An amount will be granted by recommendation of the Administration of a total of 5.2% of the individual's base salary (not including the increment) not to exceed the maximum of schedule. This provision shall not apply to teachers who were at or above the maximum salaries in 1982-1983.

Each teacher at the maximum of either the Bachelor's or Master's Degree level in 1982-1983 shall receive an increase of 7.5% over their 1982-1983 base salary.

"1983-84 CONTRACT REOPENER:

"In the event that the percentage increase in the Consumer Price Index - All Urban Consumers, Milwaukee Area (1967 = 100) between March 1982 and March 1983 exceeds 11%, the Union may exercise an option to reopen negotiations on the 1983-84 salary schedule only. In the event that the percentage increase in the Consumer Price Index - All Urban Consumers, Milwaukee Area (1967 = 100) between March 1982 and March 1983 is less than 7%, the Board may exercise an option to reopen negotiations on the 1983-84 salary schedule only. In

either case, notice of intent to reopen must be served, in writing, upon the other party on or before June 15, 1983. It is expressly agreed that if said option is exercised, any increased costs in applicable fringe benefits during the term of the Agreement will be considered during those reopener negotiations. It is also expressly understood that such reopener negotiations will be subject to mediation/arbitration procedures under Section 111.70, Wis. Stats."

ASSOCIATION'S FINAL OFFER

"1982-1983 SALARY SCHEDULE

	BA	MA
Minimum	\$13,890	\$15,512
Maximum	24,881	28,660
(Actual Max.)	(25,355)	(29,156)
Increment	743	835

An amount will be granted by recommendation of the Administration of the total of 9.2% of the individual's base salary (not including the increment) not to exceed the maximum of schedule. This provision shall not apply to teachers who were at or above the maximum salaries in 1981-82.

Each teacher at the maximum of either the Bachelor's or Master's Degree level in 1981-82 shall receive an increase of 9.7% over their 1981-82 base salary.

. . .

"1983-84 SALARY SCHEDULE

	BA	MA
Minimum	\$15,070	\$16,830
Maximum	26,996	31,096
(Actual Max.)	(27,688)	(31,838)
Increment	807	907

An amount will be granted by recommendation of the Administration of a total of 8.6% of the individual's base salary (not including the increment) not to exceed maximum of schedule. This provision shall not apply to teachers who were at or above the maximum salaries in 1982-1983.

Each teacher at the maximum of either the Bachelor's or Master's Degree level in 1982-83 shall receive an increase of 9.2% over their 1982-83 base salary."

"1983-84 Contract Reopener

"In the event that the percentage increase in the

## POSITIONS OF THE PARTIES AND DISCUSSION

This case is unique and considerably different from the normal mediation/arbitration case in that the dispute separating the parties has been so finely and narrowly honed and presented in this case and by the fact that the parties have agreement on many matters that usually the parties are in disagreement on in this type case.

First, with respect to those items upon which the parties agree, they agree on the choice of comparative districts and they agree upon the costing of their respective salary offers.

The District's wages only final offer constitutes an average wage only increase of \$422,572.00 or 9% and generates an average teacher increase of \$1,993.00 for the 1982-83 school term. The total package cost of the District's first year offer is \$592,808.00 or a percentage increase of 9.6%. That represents an average teacher total compensation increase of \$2,796.00.

The Association's offer for the 1982-83 year represents a wages only increase in the sum of \$546,268.00 or 11.6% which will generate an average teacher increase of \$2,577.00. The total package cost is \$744,674.00 or 12.1% for an average teacher total compensation increase of \$3,513.00.

For the year 1983-84, the District's offer represents a wages only increase in the amount of \$415,957.00 or 8.1% which would generate an average teacher increase of \$1,962.00. The total package cost would be \$571,966.00 or 8.5% for an average teacher total compensation increase of \$2,698.00.

The Association's final offer for 1983-84 would represent a wages only increase in the amount of \$566,552.00 or 10.8%, yielding an average teacher increase of \$2,672.00. The total package cost would be \$755,943.00 or 10.9% representing an average teacher total compensation increase of \$3,566.00.

The total dollar difference between the two offers over the two year period is approximately \$500,000.00.

As stated above, the parties were in basic agreement with respect to the comparison districts that are most properly utilized in their relationship. Their agreement on such comparison districts evolved out of an arbitration decision involving the parties in 1980 by Arbitrator Zeidler. Since that time, the parties have jointly utilized three groupings of school districts for comparability purposes. A group termed the "most comparable" consisted of South Milwaukee, Cudahy, Oak Creek, and St. Francis. The second grouping referred to as "regionally comparable", consisted of Franklin, Greendale, Greenfield, and Whitnall. The third grouping referred to as those "generally comparable" comprise the balance of the school districts in the metropolitan Milwaukee community. Such third group consisted of ten districts.

The evidence is undisputed to the effect that approximately 12 of the 18 or 19 districts, which 19th district has been shown on some exhibits to be the additional district of Glendale, negotiated two-year settlement agreements during 1981 covering the 1981-82 school year and the 1982-83 school year. Of the approximately 12 districts within the total of the three comparable groups that settled on such two-year agreements, the approximate average percentage increase granted teachers by such comparable districts, was approximately 11.5 or 11.6%.

It is the Association's major contention that arbitrators have clearly established the factor of comparability as being the major and most often controlling factor in the med/arb process. They contend that it should be given controlling consideration in this case, and that if it is, then the Association's final offer of 11.6% on wages only, is much more consistent and comparable to the average of the level of settlements reached in the majority of the comparable districts which is between 11.5 and 11.6%.

The District does not raise any factual dispute concerning the average level of settlements that are yielded by the second year settlements in the comparable districts utilized by the Union.

The District's position in response to the Union's position is best illustrated by the following excerpts from the District's reply brief which are as follows:

"The Association attempts to support its very high wage demand with what it terms an 'established settlement pattern' among comparable districts. There are two problems with this approach. First, the Association's analysis selectively filters out the fact that the economy has played a significant role in these settlements. Second, more recent arbitral awards and settlements clearly establish that the Board's position on settlement timing is the more reasonable.

"The Association cites fourteen arbitration awards to support its conclusion that settlements, regardless of the state of the economy, should be determinative of the decision in the instant proceeding. A careful reading of these decisions indicates that the Association has failed to recognize that the economy, at the time of settlement, has a direct impact on the settlement itself.

...

"Thus the above-cited decisions lend credence to the Board's argument that the timing of settlements is a critical factor in judging the comparable weight of those settlements. When the School Districts of Brown Deer, Elmbrook, Franklin, Greendale, New Berlin, Nicolet, Shorewood, Wauwatosa, West Allis, Whitefish Bay and Whitnall settled, the inflation rate was significantly higher and the unemployment rate much lower than now. Those Districts based their decisions on the state of the economy at that time."

The District contended that a mediator/arbitrator is to apply all of the factors set forth in Section 111.70(4)(cm) 7 of the Wisconsin Statutes. The District contends that in this case and during this time frame, other factors referred to in the statute should be entitled to similar if not greater weight than the single factor of comparability of level of settlements. The District contended that in preparing its final offer it gave specific and careful review and consideration to each of the statutory criteria and that the arbitrator should do likewise. They state in their brief at page 8 as follows:

"The specific criteria the Board reviewed and considers germane to this dispute are the following:

1. The interests and welfare of the public.
2. The average consumer prices for good and services.
3. Comparisons with the wages of private sector employees, other municipal employees

and other teaching employees performing similar services in public and private employment both within and without the community.

4. Comparisons with the total compensation received by other public sector employees both within and without the community.
5. Changes in any circumstances during the course (sic) of the proceeding.
6. Other factors that need to be considered when determining wages for public sector employees."

The Association, in its brief, reviewed the decisions of numerous arbitrators and suggested that arbitrators have established certain rules of interpretation and application of the statutory factors to resolution of disputes. They address the way in which they contend arbitrators should apply such rules at pages 10-11 of their brief as follows:

"...Consistent decisions by different arbitrators have the effect, then, of promoting voluntary settlements. Inconsistent decisions will lead to confusion between the parties as to what the outcome of an arbitration of their dispute is likely to be. Such confusion will impede the achievement of voluntary decisions. The SMEA believes that arbitrators have consistently viewed the 'comparables' as the primary statutory criterion. The SMEA believed that its 11.6% final offer was fair when compared to the existing 11.6% voluntary settlement pattern among the comparison districts and, therefore, should have been agreed to by the Board. In our opinion, then, the key element of this dispute is whether the 'comparables' should continue to be the primary statutory criteria on which the fairness of final offers is judged. The SMEA has argued in the affirmative. We feel that consistency in the application of the statutory criteria is important to the future ability of the parties to measure their respective aspiration levels against the potential outcome of arbitration and thus reach a voluntary settlement."

Both parties to this proceedings presented a substantial number of detailed exhibits containing data directed at supporting each of their respective positions within the framework and application of the statutory factors. From a thorough study of the large volume of documentary evidence submitted by both parties concerning the percentage amounts and dollar amounts of contractual settlements of the comparable school districts, it is clear to the undersigned that both parties have been extremely accurate and are essentially utilizing the same dollar and percentage amounts in their respective arguments.

The thing of beauty in reading and studying the briefs and reply briefs of both parties, is the highly skillful and professional manner in which each representative has artfully utilized basically the same data, each in several different methodology approaches that lends support to their respective positions.

For example, the Union has concentrated and placed substantial emphasis upon the percentage levels of settlements for the prior years and for the first year of this two-year agreement and through utilization of percentage comparisons, shows that teachers of the South Milwaukee District have received a lesser percentage increase than the comparables and as a result, their relative comparative standing among the 18 comparables has been lowered and will be substantially lowered if the District's final offer for the two years is granted.

The Association Exhibits No. 12 through 32 detail the relative standing that South Milwaukee enjoyed during the 1980-81 school year at various levels of the salary schedule, compared how they ranked as a result of the mediator/arbitrator's selection of the District's final offer for such 1981-82 school year, and then projected the relative standing South Milwaukee would enjoy under either the Association's or District's final offer in comparison to its relative standing in such prior years. Generally such exhibits demonstrated that the South Milwaukee salary structure would result in a lower ranking in the vast majority of areas within the salary schedule if the District's final offer were to be implemented, but that the relative ranking of South Milwaukee would be substantially maintained without gain or loss under the final offer of the Association.

The representative of the District, utilizing basically the same source salary data as that referred to by the Union, artfully constructed a comparative analysis at page 29 of its brief in a manner that indicated that the District's final offer did not serve to place South Milwaukee teachers in a "catch up" status, but that they remained equitably positioned and comparable to those other districts in the three groupings of comparables which the parties had referenced. Such comparison method used by the District representative is easier to reproduce than it is to explain. Such comparison as found at page 29 of the District's brief is as follows:

"Comparison of 1982-83 Maximum Salary Levels.  
(Including Longevity)  
Between South Milwaukee and Comparable School Districts

<u>Salary Position</u>	<u>South Milwaukee</u>	<u>Most Comparable Average</u>	<u>Regionally Comparable Average</u>	<u>Generally Comparable Average</u>	<u>Total Average</u>
BA 0 Max.	\$25,248	\$24,149	\$23,642	\$23,876	\$23,865
BA+15 Max.*	25,698	25,122	24,682	24,863	24,824
BA+36 Max.*	26,328	25,648	27,226	25,921	26,162
MA 0 Max.*	28,784	27,260	29,638	28,655	28,666
MA+15 Max.*	29,234	28,378	29,405	29,366	29,506
MA+36 Max.*	29,864	29,705	31,935	30,071	30,418 "

The District further contended that on the basis of utilizing data contained in some of the Union exhibits and specifically as demonstrated by information contained in Union Exhibit No. 33, that the application of a lower percentage increase at some of the positions in the salary schedule would and did result in larger dollar amount increases than did the application of a higher percentage increase to comparable levels of the salary schedule in effect at some of the other comparison districts. They contend that as a result, percentages in some instances are misleading and therefore are not a true comparison measurement.

charts

The following / illustrate how two experienced and skillful representatives can utilize the same supporting data and organize it in a manner that reasonably supports their different respective positions. The first is a chart prepared by the Association showing the ranking of the teachers at various benchmarks of the salary schedule and their comments as to how the Board offer will merely accentuate an additional loss or decrease in salary rank at pages 27-28 of their brief as follows:

" South Milwaukee Teachers' Loss in Salary Rank, 1980-81 to 1981-82

Benchmark	"Most Comparable" Districts (4)		"Regionally Comparable" Districts (18)		"Generally Comparable" Districts (18)	
	1980-81	1981-82	1980-81	1981-82	1980-81	1981-82
BA Minimum	2	4	4	7	5	17
BA, Step 7	3	4	6	8	8	11
BA Maximum	3	3	3	3	4	4
MA Minimum	3	4	7	8	10	14
MA, Step 10	2	2	5	6	6	9
MA Maximum	1	1	3	3	5	8
Sched. Maximum	3	3	7	7	13	12"

"This chart shows that the relative rank of South Milwaukee teacher salaries at these benchmark positions dropped dramatically from 1980-81 to 1981-82. Such a result is mathematically quite logical since the average salary increase in South Milwaukee was only 9.6% (1,992) while the average increase among the comparable districts was 11.6% (\$2,335).

"SMEA Exs. 26-32 demonstrate the impact of the parties' final offers on the comparative position of South Milwaukee teacher salaries at the benchmark steps with the salaries at those same steps in the districts that are already settled for 1982-83. For example, SMEA Ex. #26 shows that the BA minimum salary in South Milwaukee of \$12,900 ranked 4th out of the ten districts in 1980-81. The 1981-82 salary of \$12,720 ranked tenth (last) in 1981-82. The SMEA final offer of a \$13,890 BA minimum salary in 1982-83 and the Board's offer of a \$13,420 salary at this step will both cause the rank position to remain tenth (last) in 1982-83. The Board's offer, however will cause the size of the gap to increase between the South Milwaukee salary at this step and the salary for the other districts. For instance, while the 1980-81 South Milwaukee BA minimum salary was \$250 ahead of the BA minimum salary in Franklin, it was \$180 behind in 1981-82. It will be \$730 behind the Franklin salary in 1982-83 under the South Milwaukee Board's offer and \$260 behind under the SMEA offer. In other words, although the relative rank will remain the same in 1982-83 under both offers, the Board's offer will cause the South Milwaukee teacher salary at this step to fall \$550 further behind the Franklin teacher salary, while the SMEA offer will only increase the size of the gap by \$80. A similar analysis can also be made at the BA maximum salary (SMEA Ex. #28), at the MA maximum salary (SMEA Ex. #31) and at the scheduled maximum salary (SMEA Ex. #32). At the remaining benchmark positions, the Board's offer reduces the relative rank of south Milwaukee teacher salaries as well as increasing the size of the gap between South Milwaukee salaries and the salaries at the same steps of teachers in the Districts that are settled for 1982-83.

"Since the salary settlement pattern is 11.5%, the SMEA offer is at 11.6% and the Board's offer is at 9%, it should be no surprise to discover from SMEA Exh. #12-32 that the South Milwaukee Board final offer will have a very adverse effect on the relative standing of South Milwaukee teacher salaries at the benchmark steps while the SMEA offer will barely allow us to maintain our relative rank."

The District representative, utilizing the same source material as that utilized by the Union, presented a different comparison approach which is illustrated on pages 34-36 of their brief as follows:

"E.

Average Dollar Increase At Bachelor Levels  
1980-81 to 1982-83\*

	<u>BA</u> <u>Base</u>	<u>BA</u> <u>Step 7</u>	<u>BA 0</u> <u>Max</u>	<u>BA+15</u> <u>Max</u>	<u>BA+36</u> <u>Max</u>
<u>South Milwaukee</u>	\$1,420	\$1,955	\$4,140	\$4,215	\$4,320
<u>Most Comparable</u>	1,773	2,342	3,390	3,520	3,592
<u>Regionally Comparable</u>	2,481	3,017	4,014	4,193	4,642
<u>Generally Comparable</u>	2,369	3,153	4,000	4,155	4,191
<u>Total</u>	2,308	2,997	3,916	4,073	4,202

\*Board's Final Offers included in averages where no settlements exist.

F.

Average Dollar Increase At Master's Levels  
1980-81 to 1982-83\*

	<u>MA</u> <u>Base</u>	<u>MA</u> <u>Step 7</u>	<u>MA D</u> <u>Max</u>	<u>MA+15</u> <u>Max</u>	<u>MA+36</u> <u>Max</u>
<u>South Milwaukee</u>	\$1,586	\$5,605	\$4,512	\$4,587	\$4,692
<u>Most Comparable</u>	1,981	1,987	3,806	3,956	4,130
<u>Regionally Comparable</u>	2,587	3,371	5,166	5,222	5,454
<u>Generally Comparable</u>	2,635	3,493	4,798	4,912	4,982
<u>Total</u>	2,531	3,233	4,735	4,842	4,961

\*Board's Final Offers included in averages where no settlements exist.

"Chart E measures the average increase received between 1980-81 and 1982-83 at the Bachelor salary schedule positions noted on Board Exhibits 63-65. The Board's position compares very favorably at the BA 0, BA+15 and BA+36 maximums. Under the Board's offer, and since the 1980-81 school year, District teachers, at the BA 0 maximum, have earned increases of \$4,140. The average dollar increase in each of the comparable groupings did not rank as high. More specifically, the increase received by South Milwaukee teachers during this period of time ranks above the dollar increases at the same positions received by teachers in Greendale (\$4,048), Whitnall (\$3,757), Brown Deer (\$4,052), Elmbrook (\$3,988), Nicholet (\$3,446), Shorewood (\$3,917), Wauwatosa (\$3,954) and Whitefish Bay, (\$3,902). All of these districts had settled much earlier than the parties in the instant proceeding. Despite this fact, and despite the deterioration in the economy since then, the Board's position is fair and reasonable. The same conclusion becomes evident when the BA+15 increases and the BA+36 increases are reviewed.

"Chart F measures the increases received between 1980-81 and 1982-83 at the Master's level salary positions. Again, the Board provides a very favorable increase over the three year period of time at the MA Step 7, MA 0 maximum, MA+15 maximum and MA+36 maximum."

In addressing the matter of comparability, the District also presented data and made argument involving the "total compensation" factor referred to in paragraph f of the statute and proceeded to demonstrate through the utilization of comparison charts that using the 1981-82 school year as the benchmark, that on salary only, South Milwaukee ranked thirteenth among the eighteen comparable districts and that after insurance costs are added in to obtain a total compensation cost, South Milwaukee ranks tenth amongst the eighteen comparables.

Both parties addressed statutory factor e concerning the consumer price increases. The District presented evidence and argument to the effect that the Consumer Price Index, all Urban Consumers, Milwaukee average, should be utilized as it is the index proposed to be used by both parties in their respective wage reopeners that are a part of their final offer proposals for the second year contract.

The District contends that the rate of inflation as of July 1982 had slowed to a low of 3.8% from that of double digit percentages throughout all of 1981 at the time when all of the second year of the two-year settlement agreements referred to in the comparability portion, were settled.

The Union contends that during times of high inflation, that settlements generally have lagged behind the high rate of inflation and that arbitrators have developed and adopted a well established pattern and/or rule to the effect that the more relevant reflection of the impact of inflation upon employees is the level or pattern of settlements that have occurred during the corresponding inflationary time period. The Association stated at page 3 of their brief that,

"Many arbitrators have determined that the best measure of the cost of living criteria is what other comparable employers and employees have settled for. It is this 'direction' which the South Milwaukee School Board is refusing to acknowledge this year."

1

The Union recognized that there may be occasions when settlement patterns are non-existent and therefore one cannot evaluate such factor in determining what impact inflation has exerted at a given time on a particular level of settlement. They state at page 39 of their brief that,

"Only in the absence of such a well established pattern would the parties be forced to look at other criteria."

In this case, the Association contends that the settlement pattern that has been established by the second year contract settlements of a majority of the comparables constitutes the clearest indication of the CPI inflationary impact in the Milwaukee area.

The argument of the parties on this factor brings one directly back to the basic dispute that separates the parties on the monetary increase. The Association stated in its brief that,

"The 'timing' of settlements has little to do with their validity for comparison purposes. Statutory criteria 'd', the 'comparability' criteria, does not say that the settlements in the comparison districts must be 'recently arrived at.'"

More directly addressing the cost of living factor, and generally as such factor reflects and includes the general state of the economy including the number of unemployed and other similar data, the Association states that,

"The 'current state of the economy' is too imprecise a standard to use for determining what constitutes a fair settlement from year-to-year. The Board is insisting that the well-established settlement pattern should be ignored because the 'current state of the economy' is so vastly different from the 'state of the economy' when the settlement pattern was established."

As stated earlier herein, there is very little if any dispute concerning which districts are the most appropriate comparables, no dispute about the accuracy of the data from which each party has made computations, and there apparently is dispute only with the credibility that should be afforded the conclusions that emerge from each methodology calculation.

The Association's principal contention is that factor "d" of the statutes involving "comparison of wages..." is the primary and controlling factor in this case. Aside from arguing such point affirmatively, the Association presented argument directed at why other statutory factors should not be given weight or consideration.

In the first instance, if one reads the statutory language which charges the mediator/arbitrator with his obligation under Section 111.70(4)(cm)7, of the Wisconsin Statutes, one finds that it states as follows:

"7. 'Factors considered.' In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:"

Such section then goes on to list paragraphs a through h which the mediator/arbitrator "shall give weight." Such statute does not say "may." Had it said "may", one could then conclude that the mediator/arbitrator was intended to be given the freedom to choose one or more of the factors or that he may choose to ignore all factors and determine the case on a factor or consideration not mentioned therein, if there be one. Such section,

however, states that the arbitrator shall give weight to the following factors. The word "shall" is a mandatory term and it would thus seem that a mediator/arbitrator is obligated and must give weight to all of the factors that are therein listed if and whenever they may be relevant in a particular case. Clearly, in many cases, the parties have negotiated resolution of the majority of the issues on a new contract to the extent that only a few of the statutory factors are then relevant or bear upon the remaining issue that may be submitted to a mediator/arbitrator for resolution. In many cases, the parties themselves recognize and state that they do not consider certain factors material or of such significance as to be worthy of consideration or afforded significant weight and in many of such cases, the parties mutually do not present evidence on or argue such factors in a particular case.

Where, however, one or the other party contends that a particular factor is worthy of consideration and is entitled to be given some weight, and presents evidence and argument thereon, the mediator/arbitrator, in the judgment of the undersigned, is obligated by the term "shall" to consider and give appropriate weight to such factor.

Under such section, although it appears that one is obligated to give "weight" to all statutory factors that may be relevant to a particular case, such section does not prescribe the weight that a mediator/arbitrator must give to any particular factor. The matter of determining the appropriate weight that is to be afforded any factor, is left to the judgment of the mediator/arbitrator.

In arguing its position, the Association has contended that arbitrators have developed certain rules and that consistency should be followed by mediator/arbitrators so as to avoid confusion to the parties. In that respect, it appears that the decision of Arbitrator Neil M. Gunderman issued on October 28, 1982 in School District of Cudahy and Cudahy Education Association, Med/Arb 1587, Decision No. 19635-A, is most relevant. As noted earlier, the School District of Cudahy was one of three districts included as the most comparable with South Milwaukee. In such decision, Arbitrator Gunderman found and awarded an average wage increase of 8%, which was the Board's final offer. From a reading of Arbitrator Gunderman's decision, it is very clear that he faced almost carbon copy arguments as those advanced by the Association and the District in this case. In an extremely well written and well reasoned decision, Arbitrator Gunderman considered the same arguments as have been made by the parties in this case and stated,

"...The undersigned is persuaded that those criteria which more closely reflect the current economic environment must prevail."

This arbitrator is in agreement with the Association's contention that mediator/arbitrators should endeavor to be as consistent as possible in issuing decisions and applying the statutory criteria. I am of the firm belief that the well reasoned rationale expressed by Arbitrator Gunderman is particularly appropriate to this case for the same reasons as he has expressed in his decision. The fact that the conclusions of the undersigned correspond with and are consistent with Arbitrator Gunderman's decision, is simply additionally supportive of the following conclusions. First, the undersigned is of the judgment that the timing of any settlement is highly relevant in all situations

when determining the appropriate weight that should be afforded a particular settlement at some other specific point in time. Secondly, it simply cannot be reasonably argued that the economic climate and condition at a particular time in negotiations does not have substantial affect on the results of any such negotiations. Clearly, the type of labor management negotiations, the subject matters involved in their respective negotiations, and the levels of their settlements, are significantly affected by the particular economic climate that exists at the time the parties negotiate. The evidence presented into the record showing a decrease in the level of settlements in the private sector supports such conclusion.

The record evidence is clear that the level of the second year increases negotiated in the districts to which comparison has been made, were made at a time when the rate of inflation was at or about 11%. That level of inflation is significantly greater than the 3.8% that existed in July 1982. Such facts have direct bearing upon two considerations. First, the Association's comparison of wages under factor "d" was predicated primarily upon utilization of the percentage level of such settlements. Where the inflation rate was approximately 11% at the time that such 11.5 or 11.6% settlements (average) were reached, one could not conclude such levels of settlement were not reflective of the level of inflation that then existed. In fact, it would appear the level of settlement was in fact reflective of the level of inflation.

If one uses the same analogy, one would conclude that the level of settlement one should arrive at in July 1982, should have been 3.8%. That conclusion, however, is not realistic. After all, in real life, as well as under the statutory factors, consideration of the increase in cost-of-living, is only one of the relevant factors considered.

One is then led to find on the basis of the above, that the weight to be afforded the percentage level of settlements which the Association has argued should be entitled to controlling consideration, must be discounted.

In the considered judgment of the undersigned, the poor state of the economy, which is most frequently referred to as a severe recession, is a circumstance that is creating significant impact on bargaining relationships. Such impact therefore becomes reflective in the statutory factors as they likewise are applied to the bargaining relationship.

First, it is recognized that the unemployment rate is extremely high and the Milwaukee area shares in that high unemployment rate. Clearly, as a greater number of taxpayers are unemployed or are working less hours and/or receiving less overtime, there will be fewer taxpayers paying less taxes from whom to obtain revenue. It would therefore appear that such economic condition exerts a somewhat greater impact upon factor "c" in that it does impact somewhat more severely upon the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

Secondly, such economic conditions, it would seem, are relevant to factors "d" and "f" as they relate to hours and continuity and stability of employment from the standpoint that in the private sector, many employers are working short work weeks or have implemented significant layoffs. It is not feasible, at least up to this time, nor has it been a practice, for school districts to have teachers work short work weeks or to lay them off sporadically, similar to how those actions have occurred in the private sector. The level of work that is required in a school district is relatively stable and as a result the continuity and stability of employment, for the most part and up to this time, is considerably more favorable as it affects school

district employees.

The depressed state of the economy also directly impacts on factor "e" and is reflected by the lower percentage increase in the consumer price index.

The Association's contention that the average level of settlement by a majority of comparables should be entitled to controlling weight, would be very persuasive, were the economy relatively comparable to what it was at the time of settlement of the comparables. If the economy had improved and inflation had been higher, the Association argument would be even more persuasive. The opposite is what has, in fact, occurred. In addition, the impact and affect on other statutory factors is more pronounced. Consistent with my view expressed in North Central VTAE, the 11.5% average settlement of the comparables reasonably reflect the CPI existing at the time of those settlements and the lower district offer therefore more realistically reflects the CPI at this time. On applying and weighing the various factors to the respective final offers of the parties, the undersigned comes to the conclusion that, on balance, the greater number of factors and the greater weight, favors the lower offer of the District.

This arbitrator, like the parties, has no crystal ball that would enable one to accurately evaluate and judge whether the District's or Association's second year offer is reasonable or unreasonable. The undersigned would find that neither is shown to be unreasonable and the contract reopener clause proposed by either party would insure that a reopener reasonably would be available to correct it should events prove the level to be unrealistic, either way.

On the basis of the above facts and discussion thereon it follows that the undersigned issues the following decision and

AWARD

That the final offer of the District be incorporated in the written collective bargaining agreement of the parties.

  
Robert J. Mueller  
Mediator/Arbitrator

Dated this 6th day of  
December, 1982.